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STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions
The Honorable Donald Hocker, Circuit Court Judge

Appellate Case No. 2022-000571

THE STATE,

Respondent,

v.

ADAM ROWELL,

Petitioner.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

A juror's intentional concealment of material information during voir dire warrants a new trial when the concealment indicates bias. Rowell moved for a new trial based on a juror's nondisclosure of a recent arrest, but did not seek to secure the juror's testimony at the evidentiary hearing. Did the trial court abuse its discretion by declining to convene an additional hearing to secure testimony from the juror before ruling on Rowell's motion?

STATEMENT OF THE CASE

A Greenwood County grand jury indicted Petitioner Adam Rowell on one count of felony DUI resulting in death and one count of felony DUI resulting in great bodily injury. He proceeded to jury trial on February 13–27, 2017, before the Honorable Donald R. Hocker, Circuit Court Judge. Rowell was convicted as charged and sentenced to thirteen years' incarceration with a \$10,100 fine for felony DUI resulting in death, and eight years' incarceration with a \$5,100 fine for felony DUI resulting in great bodily injury.

Rowell filed a motion for a new trial on March 7, 2017, raising fifteen grounds, including juror misconduct. (App.1354–65). Rowell filed a supplement to his motion on March 29, 2017, related to the juror misconduct issue. (App.1368). Rowell alleged Juror #164 failed to disclose a recent arrest and "previously served as a confidential informant for the Greenwood Police Department." (App.1368). A hearing was convened on November 27, 2017, to address Rowell's motion. Rowell did not present any evidence related to the juror misconduct allegation at the hearing. Following the hearing, the trial court requested briefing from the parties on the juror misconduct allegation. Via email, Rowell submitted a memorandum of law and requested the court to convene another hearing to secure testimony from the juror. The court denied Rowell's motion in a written order dated December 27, 2017.

Rowell appealed his conviction, raising four grounds. The first three grounds related to admission of blood-alcohol evidence. The fourth ground alleged juror

misconduct. His convictions were affirmed by the Court of Appeals in a decision filed July 7, 2021. After dueling petitions for rehearing, the Court of Appeals withdrew its original opinion and substituted an opinion filed on August 25, 2021. (App.1559). Rowell filed another petition for rehearing. The Court of Appeals granted the petition and withdrew its prior opinion, filing a unanimous published opinion on March 2, 2022. (App.1577–89). State v. Rowell, 436 S.C. 54, 870 S.E.2d 175 (Ct.App. 2022). Rowell filed a petition for rehearing en banc, which was denied on April 1, 2022. (App.1590, 1609). This Court granted certiorari on the juror concealment issue on May 17, 2023.

STANDARD OF REVIEW

The denial of a motion for a new trial based on allegations of juror concealment is reviewed for an abuse of discretion. Hassell v. City of Columbia, 430 S.C. 620, 626, 846 S.E.2d 373, 376–77 (Ct. App. 2020).

ARGUMENT

The trial court was not required to convene multiple evidentiary hearings to address Rowell's claim of juror misconduct. The undisclosed information did not indicate bias and the record supports the trial court's finding that the juror's nondisclosure was not intentional.

Rowell claims the trial court erred by refusing to conduct an evidentiary hearing to address his claim of juror bias. This argument ignores the fact that the trial court did conduct an evidentiary hearing. Rowell had the opportunity to present evidence to support his claim at this hearing, but failed to do so.

Nonetheless, the trial court learned important information at the hearing which allowed him to make an informed decision on Rowell's motion. The trial court did not abuse its discretion by declining to conduct an additional hearing following Rowell's untimely request to take testimony from the juror. This Court should affirm. In the alternative, if the Court finds an abuse of discretion, it should remand the case to the trial court for testimony from the juror.

A. Applicable law.

"When a juror conceals information inquired into during voir dire, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing Thompson v. O'Rourke, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986)). The fact of nondisclosure is not sufficient; the court must find intentional concealment. See

State v. Sparkman, 358 S.C. 491, 497, 596 S.E.2d 375, 378 (2004) ("Because [the juror's] concealment was unintentional our inquiry is over . . ."). "[C]arelessness is not equivalent to partiality." Porter v. White, 23 F.4th 322, 331 (4th Cir. 2022). Intentional concealment occurs "when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." Woods, 345 S.C. at 588, 550 S.E.2d at 284. "Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." Id.

In addition to intentional concealment, a defendant must show the information was material. The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred. State v. Kelly, 331 S.C. 132, 146, 502 S.E.2d 99, 106 (1998). Juror concealment of material facts in response to questions bearing a substantial likelihood of uncovering a *strong potential of juror bias* undermines the peremptory challenge process. Long v. Norris & Assocs., Ltd., 342 S.C. 561, 573, 538 S.E.2d 5, 12 (Ct. App. 2000) (citing 47 Am.Jur.2d Jury §191 (1995) (emphasis added). Juror concealment of information that is not material does not support an inference of bias. See Woods, 345 at 589, 550 S.E.2d at 285 ("Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial court

inquire into prejudice.") (quoting Doyle v. Kennedy Heating & Service, Inc., 33 S.W.3d 199, 201 (Mo.Ct.App.2000)).

"The motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial." United States v. Langford, 990 F.2d 65, 68 (2d Cir. 1993) (quoting McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548, 556 (1984)). The "relevant issue is whether the juror was actually biased against the defendant." Young v. United States, 694 A.2d 891, 894 (D.C. 1997). Juror bias exists when a juror cannot "give a fair and impartial trial to the parties." Brown v. S.H. Kress & Co., 170 S.C. 178, 170 S.E. 142, 142 (1933); see also S.C. Code Ann. § 14-7-1020 ("If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.").

For example, in Langford, a juror concealed the fact that she had been convicted of prostitution, but did so only to avoid embarrassment. Langford, 990 F.2d at 69–70. The Second Circuit Court of Appeals held the concealment of this information did not suggest bias, and affirmed the denial of a new trial. See also United States v. Bishop, 264 F.3d 535, 555 (5th Cir. 2001) ("Even when a juror's non-disclosure is dishonest as opposed to mistaken, his behavior is not a basis for reversal unless the dishonesty appears to be rooted in bias or prejudice.").

An implication of bias may rise in "extreme situations," such as "when a juror is a close relative of one of the participants in the trial," or is "an actual employee of the prosecuting agency" Smith v. Phillips, 455 U.S. 209, 222 (1982) (O'Connor,

J., concurring). "The common law cautiously excludes from the jury box for implied prejudice persons occupying a certain status or relationship to a litigant." Photostat Corp. v. Ball, 338 F.2d 783, 785 (10th Cir. 1964). "[C]onsanguinity is the classic example of implied bias." United States v. Mitchell, 690 F.3d 137, 145 (3d Cir. 2012). See also Tinsley v. Borg, 895 F.2d 520 (9th Cir.1990) (identifying situations where courts have inferred juror bias).

When juror bias claims are raised prior to jury deliberations, trial courts have the option to replace the juror with an alternate. See State v. Coaxum, 410 S.C. 320, 328, 764 S.E.2d 242, 246 (2014). Because replacement is not an option when allegations are raised after trial, such a motion implicates the strong societal interest in the finality of judgments. See Tanner v. United States, 483 U.S. 107, 120 (1987) ("Allegations of juror misconduct, incompetency, or inattentiveness, raised for the first time days, weeks, or months after the verdict, seriously disrupt the finality of the process."); State v. Buckom, 126 N.C. App. 368, 485 S.E.2d 319, 327 (1997) (explaining there are "competing policy considerations supporting, on the one hand, the right of an individual to a fair trial guaranteed by our state and federal constitutions and, on the other, the interest of the public and the parties in maintaining a final judgment"). In such situations, federal courts require a defendant to show *actual juror bias* or intentional concealment of information that would support a challenge for cause. Smith v. Phillips, 455 U.S. 209, 215 (1982) (holding "the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias"); McDonough, 464 U.S. at 556

(holding "a party must first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause"); see also Buckner v. Davis, 945 F.3d 906, 911 (5th Cir. 2019) ("To demonstrate actual bias, 'admission or factual proof of bias must be presented."). A juror is actually biased when he cannot be impartial. Porter v. White, 23 F.4th 322, 327 (4th Cir. 2022). On at least one occasion, this Court has cited the "actual bias" test. State v. Bryant, 354 S.C. 390, 395, 581 S.E.2d 157, 160 (2003) (per curiam) ("In cases where a juror's partiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the opportunity to prove actual juror bias." (citing Phillips)).

When a defendant raises a post-verdict motion for a new trial based on allegations of juror concealment, he bears the burden of proving his allegation. Bryant, 354 S.C. at 395, 581 S.E.2d at 160 (explaining "*the defendant* has the opportunity to prove actual juror bias") (emphasis added); Woods, 345 S.C. at 589, 550 S.E.2d at 285 ("*the movant* need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges") (emphasis added); State v. Tucker, 423 S.C. 403, 414, 815 S.E.2d 467, 472 (Ct. App. 2018) ("As the party alleging misconduct, Tucker bore the burden of proving Juror A was biased or otherwise lacked ability to follow her oath."); Dennis v. United States, 339 U.S. 162, 171–72 (1950) ("Preservation of the *opportunity to prove* actual bias is a guarantee of a defendant's right to an impartial jury.") (emphasis added); but see State v. Miller,

398 S.C. 47, 56, 727 S.E.2d 32, 36–37 (Ct. App. 2012) (Few, C.J.), opinion vacated, appeal dismissed, 409 S.C. 312, 762 S.E.2d 394 (2014) (explaining "our courts have not clearly indicated that the defendant has the burden of proving the juror's *concealment* of the information was intentional . . . we interpret the lack of a clear statement about it to indicate that the existence and scope of any burden remains an open question.") (emphasis added).

B. Discussion.

1. The trial court was not required to conduct multiple hearings.

Rowell alleges the trial court erred by not conducting an evidentiary hearing to address his claim of juror bias. His argument ignores the fact that the trial court did convene an evidentiary hearing and Rowell failed to offer any evidence to support his claim. It was within the trial court's discretion not to hold an additional evidentiary hearing to examine the juror about his nondisclosure when the trial court had enough information to determine the juror's nondisclosure was objectively reasonable. This Court should affirm.

Rowell had an opportunity to present evidence to support his claim at the evidentiary hearing convened in November 2017 to address his motion for a new trial, which was filed in March. (App.1363–65). See Dennis, 339 U.S. at 171–72 ("Preservation of the *opportunity* to prove actual bias is a guarantee of a defendant's right to an impartial jury.") (emphasis added); Bryant, 354 S.C. at 395, 581 S.E.2d at 160 ("In cases where a juror's partiality is questioned after trial, it is appropriate to conduct a hearing in which the defendant has the *opportunity* to prove actual

juror bias.") (emphasis added). It was Rowell's burden to prove juror bias. See Tucker, 423 S.C. at 414, 815 S.E.2d at 472.

Defense counsel did not attempt to secure the juror's presence at the hearing. He explained the juror was represented by a lawyer in the public defender's office, and he was concerned there might be ethical issues with contacting him.

(App.1406, lines 8–11). He further explained he had been in contact with the juror's lawyer, who told him the juror had "no interest in talking to [him]." (App.1406, line 11–13).

Rowell could have subpoenaed the juror. See Rule 13(a)(1), SCRCrimP ("Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. An attorney, as an officer of the court, may also issue and sign subpoenas or subpoenas duces tecum for any person to attend as witnesses in any cause or matter in the General Sessions Court."). Counsel knew the juror's identity and how to reach him through the attorney representing him in his criminal case, a different matter than Rowell's. Even if counsel had ethical concerns about communicating with the juror, he was required to at least serve a subpoena to secure the juror's presence at the hearing and litigate the issue if necessary.

Likewise, defense counsel did not request that the trial court attempt to secure the juror's presence at the November hearing. During the hearing, counsel indicated that he did not think the court had the power to do so. He stated: "I'm not

even sure you can make him come in here and talk to us about . . . that." (App.1406, lines 18–20). Rowell did not request the court to summon the juror until an email exchange in December, after the court requested briefing on the juror concealment issue. (App.1438). Rowell was afforded an opportunity to prove his allegation of juror bias but failed to do so. See Buckner, 945 F.3d at 912 (rejecting post-trial claim of juror bias where defendant "supplied only a one-sentence hearsay statement—unaccompanied by an investigation or explanation of its source," thus failing to prove actual bias). The trial court was not required to sua sponte summon the juror to the November hearing. See Sims v. Rowland, 414 F.3d 1148, 1157 (9th Cir. 2005) (rejecting the argument "that a trial judge has a duty, sua sponte, to conduct a hearing" to address an allegation of juror concealment).

The trial court certainly had the authority to convene an additional hearing and summon the juror to testify about the circumstances of his nondisclosure. Indeed, the State suggested in an email to the court that it would be appropriate to do so. (App.1437–38). Even though this would have been an appropriate, and perhaps preferable, course of action, the trial court was not required to recall the juror. Rather, trial courts have discretion as to the manner and extent of investigation into allegations of juror concealment. See Tracey v. Palmateer, 341 F.3d 1037, 1044 (9th Cir. 2003) (explaining Supreme Court precedent does "not stand for the proposition that *any time* evidence of juror bias comes to light, due process requires the trial court to question the jurors alleged to have bias," but rather there exists a "flexible rule" affording discretion to trial courts to determine

to extent of any investigation based on "the content of the allegations, the seriousness of the alleged misconduct or bias, and the credibility of the source"); accord Buckner, 945 F.3d at 912.

In State v. Aldret, 333 S.C. 307, 509 S.E.2d 811 (1999), the defendant alleged after the verdict that premature jury deliberations prejudiced his right to a fair trial. This Court drew a distinction between allegations made during trial and those that come to light after the jury's verdict. In the latter scenario, this Court held "the trial court may consider affidavits" to address the issue. Id. at 315, 509 S.E.2d at 815. "If the trial court finds the affidavits credible, and indicative of premature deliberations, an evidentiary hearing should be held to assess whether such deliberations in fact occurred, and whether they affected the verdict. At such an evidentiary hearing, the trial court *may, upon request of the moving party*, reassemble the jurors and conduct voir dire to ascertain the nature and extent of the premature deliberations." Id. at 315, 509 S.E.2d at 815 (emphasis added).

In State v. Tucker, 423 S.C. 403, 815 S.E.2d 467 (Ct.App. 2018), the Court of Appeals applied Aldret to an allegation that a juror intentionally concealed her relationship with a potential witness. The trial court relied on affidavits submitted by the defendant to assess the claim of juror bias. At a hearing convened to address the motion for a new trial, defense counsel requested a full evidentiary hearing. The trial court denied the motion. The Court of Appeals affirmed, rejecting Tucker's claim that the trial court abused its discretion by denying his request for a full evidentiary hearing. The court held: "We decline to adopt a more rigid approach

as Tucker proposes, where the mere allegation of misconduct mandates a full-blown adversarial hearing." Tucker, 423 S.C. at 414, 815 S.E.2d at 472; see also Lynch v. Carolina Self Storage Centers, Inc., 409 S.C. 146, 159, 760 S.E.2d 111, 119 n.2 (Ct. App. 2014) (explaining "a trial court is not obligated to take juror testimony when the court determines it can rule on the first prong [of juror misconduct analysis] without it"); State v. Galbreath, 359 S.C. 398, 401, 597 S.E.2d 845, 846 (Ct. App. 2004) (affirming denial of new trial where the "trial judge heard arguments on the motion for a new trial but refused to reconvene the jury for questioning"); State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998) ("The trial court has broad discretion in assessing allegations of juror misconduct.").

While Rowell's claim is technically preserved for review because he did eventually request that the court summon the juror for in-court testimony, his untimely request weighs against finding an abuse of discretion. The November 2017 hearing was a legitimate evidentiary hearing. Rowell offered evidence to support his other grounds for a new trial. (App.1380–82). Counsel gathered documents after trial, including a letter from an expert witness, and presented these documents to the trial court at the hearing. (App.1382, lines 7–9). Counsel understood the November hearing was his opportunity to prove his allegations.

The trial court was not required to conduct multiple hearings to address the same allegation of misconduct, particularly when Rowell did not provide a valid excuse for his failure to secure the juror's presence at the November hearing and expressed doubt about the court's power to summon the juror. In a petition for

rehearing to the Court of Appeals, Rowell claimed "[s]ubpoenaing the Juror to the November 27 hearing would not have been productive" because defense counsel did not yet have the transcript of the hearing. (App.1553). This assertion is meritless. Defense counsel could have simply asked the juror why he did not disclose his arrest. Counsel did not need the transcript to ask this basic question.

Perhaps defense counsel recognized it was extremely unlikely that the juror's testimony would support his claim and believed he stood a better chance of success by relying on the mere fact of nondisclosure, only to reverse course when the trial court requested briefing on the issue. Regardless, Rowell had an opportunity to prove his allegation. This is all due process requires. See Dennis, 339 U.S. at 171–72.

2. Rowell failed to show Juror #164's arrest would have supported a challenge for cause or would have been a material factor in the exercise of his peremptory challenges.

Despite Rowell's failure to offer any evidence to support his claim of juror bias, the trial court learned important information at the November hearing which allowed it to make an informed ruling on the allegation. In his written motion for a new trial, Rowell alleged the juror had served as a confidential informant for a local law enforcement agency. (App.1368). The trial court learned at the evidentiary hearing this allegation was not true. (App.1404, lines 10–12). The trial court further learned the solicitor's office was not yet prosecuting the juror when jury selection occurred. Juror #164's arrest occurred in the town of Ware Shoals on January 20. (App.1414, lines 24–25; App.1435). Rowell's trial began on February

13. At the hearing on Rowell's motion for a new trial, the assistant solicitor prosecuting Rowell informed the court that the case was transmitted from Ware Shoals to the Greenwood County Clerk's Office on the Wednesday of trial, after jury selection had occurred. (App.1414–15). Accordingly, the case was not "being prosecuted by the office of the solicitor" when the question was asked during voir dire. Brief of Petitioner at 1.

Furthermore, the case had not yet been assigned to an assistant solicitor at the time of voir dire. (App.1415, line 3). The juror may not have been aware that one of the prosecuting attorneys in Rowell's case would later be assigned to his case. When Rowell made this allegation after trial, the case was reassigned to a different prosecutor. (App.1435). There is no evidence the juror ever contacted the prosecutor or otherwise sought any advantage based on his jury service:

Finally, the juror had not had his initial appearance at the time of Rowell's trial. (App.1433). The juror may not have understood the office prosecuting Rowell would also be responsible for prosecuting him. Rowell did not produce any evidence to show otherwise. While defense counsel asserted the juror would have been informed on his bond paperwork that he would be prosecuted by the solicitor's office, there is no bond paperwork in the record and no evidence the juror was actually aware the solicitor's office would be responsible for his prosecution.

Accordingly, Rowell failed to show the juror's pending charge would have supported a challenge for cause, or that it would have been a material factor in his exercise of peremptory strikes. These facts do not present a strong potential of juror

bias and do not justify an inference that the juror was actually biased. It seems more likely the juror, as someone whose life was being disrupted by criminal prosecution, would have been biased against the State. See Jones v. Cooper, 311 F.3d 306, 313 (4th Cir. 2002) (noting history of arrests would likely dispose juror in favor of defense).

This case is similar to Young v. United States, 694 A.2d 891 (D.C. 1997). In that case, prosecutors discovered after Young's trial that a juror had not disclosed his prior felony convictions and parole status during jury selection. The prosecutor further discovered he was personally prosecuting the juror's son at the time of Young's trial, though the juror made no attempts to communicate with the prosecutor at any time. At an evidentiary hearing, the juror testified his nondisclosures were unintentional and that his son's pending case did not influence his verdict. He further testified he was not aware the prosecutor on Young's case was prosecuting his son. The trial court found the juror's explanations credible and denied the motion for new trial. Id. at 893. The District of Columbia Court of Appeals affirmed. In response to Young's argument that the juror "had an incentive to curry favor with the prosecutor who was prosecuting the juror's son in another case," the court noted the juror had no knowledge that Young's prosecutor was also prosecuting his son, and this fact did not show the juror was actually biased against Young. Id. at 897. Just as the juror in Young did not know the prosecutor on Young's case was prosecuting his son, Juror #164 did not know the assistant solicitor prosecuting Rowell would later be assigned his case, and the assistant

solicitor in fact had not yet been assigned the case. Rowell's assertion that Juror #164 may have been incentivized to curry favor with the solicitor's office is highly speculative and does not support an inference of bias.

3. The record supports the trial court's finding that Juror #164's nondisclosure was reasonable in the circumstances.

The trial court reviewed the trial record when considering of Rowell's motion, which allowed him to recall the exact circumstances of the nondisclosure.

(App.1443). During the portion of voir dire where this issue originated, the trial court asked ten consecutive questions without pausing to allow a response. He instructed jurors to "keep good memory" so they could "speak with [him] privately" if they mentally answered yes to any of the questions. (App.56). In its order denying Rowell's motion, the court found the "manner in which the question was asked, and the amount of time between when the question was posed and when it was meant to be answered could be confusing to the average juror." (App.1426). The court noted it had "modified [this practice] considerably" after this trial. (App.1426).¹

In these circumstances, it was reasonable for the trial court to conclude the juror merely misunderstood the question or lost track of the question about arrests or charges. It is worth noting that Juror #164 was arrested in possession of 40 grams of marijuana. (App.1405, line13). If he was a habitual user, he may not have been able to "keep good memory" of the court's ten questions. Because the jurors

¹ Rowell's argument that his conviction should be reversed on this basis is not preserved for review because he made no contemporaneous objection to the method of jury selection. Brief of Petitioner at 12.

who responded affirmatively to any of these questions went to speak with the court privately, Juror #164 would not have heard others disclosing their prior arrests or convictions.

The Court of Appeals addressed a similar fact pattern in an opinion that was later vacated by this Court following the death of the appellant. State v. Miller, 398 S.C. 47, 55, 727 S.E.2d 32, 36 (Ct. App. 2012) (Few, C.J.), opinion vacated, appeal dismissed, 409 S.C. 312, 762 S.E.2d 394 (2014). The court observed, "the record raises concerns that the voir dire question may not have been asked separately, but as one in a long series of questions with no pause in between to allow jurors a chance to respond. In this context, it is uncertain whether the question was reasonably comprehensible." Id. at 55, 727 S.E.2d at 36. See also Dyer v. Calderon, 151 F.3d 970, 973 (9th Cir. 1998) (explaining "we must be tolerant, as jurors may forget incidents long buried in their minds, *misunderstand a question* or bend the truth a bit to avoid embarrassment") (emphasis added).

In State v. Woods, this Court employed an objective test to determine whether a juror's concealment of information during voir dire was intentional. In Woods, a prospective juror did not disclose a three-year history of volunteering as a victim's advocate at the solicitor's office, despite being asked specifically in voir dire about support for victim's rights groups and any relationship to the parties. Woods, 345 S.C. at 586, 550 S.E.2d at 283. Later, the juror "revealed her daughter had been murdered and the solicitor's office had prosecuted the person accused of having committed the murder." State v. Woods, 338 S.C. 561, 563, 527 S.E.2d 128, 129 n.2

(Ct. App. 2000), aff'd, 345 S.C. 583, 550 S.E.2d 282 (2001). The trial court examined the juror and was satisfied by her explanation that she had not intended to conceal this information. The Court of Appeals took the unusual step of reversing the trial court's factual findings, and this Court affirmed. This Court held:

"[I]ntentional concealment occurs when the question presented to the jury on voir dire is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that *the juror's failure to respond is reasonable under the circumstances*.

Woods, 345 S.C. at 588, 550 S.E.2d at 284 (emphasis added). The juror's failure to respond in Woods was so egregious that it supported an inference that the concealment was intentional and, by extension, that she was biased. Id. at 589, 550 S.E.2d at 285.

By contrast, in this case the question about arrests was asked in a confusing manner such that it may not have been reasonably comprehensible to the average juror. Furthermore, the "subject of the inquiry" would not have carried obvious importance because the solicitor's office had not yet begun prosecuting the juror, and there was no relationship or history between the juror and the solicitor's office. Accordingly, the juror's failure to respond was objectively reasonable in the circumstances and does not give rise to an inference that he was biased against Rowell. The record supports the trial court's finding that the non-disclosure was not intentional. See State v. Sparkman, 358 S.C. 491, 497, 596 S.E.2d 375, 378

(2004) ("Because [the juror's] concealment was unintentional our inquiry is over . . ."). This Court should affirm.

C. Remedy.

If this Court determines the trial court erred, the appropriate remedy is remand. See McDonough, 464 U.S. at 559 (Brennan, J., concurring) (explaining "the Court of Appeals clearly erred by deciding the issue of juror bias itself rather than remanding the issue to the District Court for a hearing and decision in the first instance. Motions for new trial on the basis of juror bias are left to the sound discretion of the trial court, and its determination should not be lightly disturbed by an appellate court. This is especially true when decision on the motion turns, as it does here, on the particular facts and circumstances involved."); State v. Berhe, 193 Wash. 2d 647, 669, 444 P.3d 1172, 1183 (2019) ("We therefore remand this case to the trial court for further proceedings. . . . We recognize that significant time has passed, which may make it difficult to conduct further inquiries or to hold an evidentiary hearing if needed. We leave it to the court's discretion on remand to address such difficulties if they arise."); Miller at 55, 727 S.E.2d at 36 (remanding for hearing on intentional concealment when juror did not testify). Even if this Court finds the trial court abused its discretion by not convening an additional hearing, the record in this case does not demonstrate juror bias. Due to the weighty interest in the finality of judgments, especially in a case as serious as this one, to which significant time and resources have been devoted, remand is appropriate to

allow the trial court an opportunity to examine the juror and adjust his factual findings if appropriate.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed. If the Court finds an abuse of discretion, the case should be remanded to the trial court to conduct a hearing as directed by this Court.

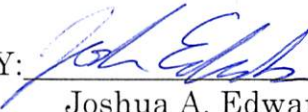
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